marks, *viz.*, that no man can acquire such rights in a name as to enable him to restrain another from truthfully calling his goods by the name of their place of origin. But the result of the decision in *Apollo* v. *Perkins*, if followed to its logical extreme, will not be found entirely satisfactory. If, as this case holds, no geographical name can ever become a trademark, it will mean that a man who has fancifully selected as a trademark a name which he believes he has himself invented may later be denied protection because the name happens to be the name of a small town or district—a fact of which he was wholly ignorant at the time he applied the name to his product. This is obviously unfair to the manufacturer, and it is no answer to say that he may yet be protected against unfair competition. That protection is far inferior to that to which a trademark is entitled, and if a man adopts what he conceives to be a fancy name for his product, it is submitted that he should not be disentitled to protection merely because the name happens to be a geographical name.

The best solution of the problem is probably that arrived at by Judge Gaynor in *Clinton Metallic Paint Co.* v. *New York Paint Co.*[18] A geographical name "may be exclusively appropriated as a mere arbitrary or fanciful name for an article generally known not to be of such place or country and not represented to be such, against every person subsequently offering a similar article, except such article be of such place or country. One so using such a name arbitrarily or fancifully may only have another restrained from using it in the same way, but not from using it truthfully, viz., in its actual meaning." This rule, though perhaps not entirely consistent with the theory that a trademark is an exclusive right, will avoid the difficulties of the two other rules discussed and will work out substantial justice between all the parties.

T. R., Jr.

WILLS—SIGNING—In view of the enormous amount of litigation that has arisen over the signing of wills it is rather extraordinary that no court has stopped to really analyze the fundamental meaning of the word. In order to sign an instrument two things must occur. There must be, first, an actual marking of the paper. And in the case of wills it has been held that this may be done by a mark[1] or an engraved name[2] or false name[3] and under many

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[18] 50 N. Y. S. 437 (1898). See also Newman v. Alford, 51 N. Y. 189 (1872).

[1] Taylor v. Dening, 3 Nev. & P. 228 (Eng. 1838); Schieffelin v. Schieffelin, 127 Ala. 14 (1899); Rook v. Wilson, 142 Ind. 24 (1895); Scott v. Hawk, 107 Iowa, 723 (1898); Nickerson v. Buch, 12 Cush. 332 (Mass. 1853); *In re* Cozzen's Will, 61 Pa. 196 (1869).

statutes may be done by some one else for the testator. Secondly, there must be an intent not merely to sign, as is usually stated, but an intent to affix this mark to a *completed* instrument in order to give it validity. For if it is intended that the instrument shall be added to or filled in, it is spoken of as signing in blank and not signing. But no statute provides for signing a will in blank.

Under the Statute of Frauds a will was merely required to be signed, and it was unimportant in what part of the instrument the signature appeared. So a will beginning—"*I, John Stanley*"—was held sufficiently signed if the testator did not intend any further signing.[4] And under similar statutes this construction has been followed in America,[5] even when the will was not written by the testatrix,[6] since it was written at her direction and the intention that it should be a signature was clear. But without a clear intent to make it such it is no more than a formal recital of the name.[7] In every case it is essential that the testator shall have the intent when he signs that the name shall give validity to the whole instrument.[8] Clearly that intent cannot apply to more than the testator has in mind at the time, therefore in order to give validity to words written afterwards he must at that time intend to write additional words.

In a recent New Jersey case, however, where a testator after writing and signing his will, inserted a bequest of an automobile, then published and acknowledged his signature and had it attested, the majority of the court held that the will with the interlineation had been signed within the meaning of the statute.[9] The New Jersey

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[2] Goods of Emerson, L. R. 9 Ir. 443 (1882); Jenkins v. Gaisford, 3 Sw. & Tr. 93 (Eng. 1863).

[3] *In bonis* Redding, 2 Rob. 339 (Eng. 1850); Long v. Zook, 13 Pa. 400 (1850).

[4] Lemayne v. Stanley, 3 Lev. 1 (Eng. 1680); Morrison v. Turnour, 18 Ves. 176 (Eng. 1811).

[5] Armstrong v. Armstrong, 29 Ala. 538 (1857); Kolowski v. Tausz, 103 Ill. App. 528 (1902); Upchurch v. Upchurch, 16 B. Mon. 102 (Ky. 1855); Booth v. Timoney, 3 Dem. Sur. 416 (N. Y. 1885) (construing the New Jersey Statute); Adams v. Field, 21 Vt. 256 (1849).

[6] Sarah Miles' Will, 4 Dana, 1 (Ky. 1836).

[7] Catlett v. Catlett, 55 Mo. 330 (1874); Ramsey v. Ramsey, 13 Grat. 664 (Va. 1857); Warwich v. Warwich, 86 Va. 596 (1890) (the statute requiring intent in this case being no more than declarative of the common law).

[8] This becomes especially important in cases where the statute requires the will to be signed at the end, for in order to find the end the court must first determine what the testator contemplated as the completed instrument. Heise v. Heise, 31 Pa. 246 (1858); Hays v. Harden, 6 Pa. 413 (1847); Glancy v. Glancy, 17 Ohio, 134 (1866); Baker v. Baker, 51 Ohio, 217 (1894). And a large part of the conflict of decisions on this point is due to the difference of opinion as to what constituted the whole will in the testator's mind.

[9] *In re* Bullivant's Will, 88 Atl. Rep. 1093 (N. J. 1913).

statute [10] requires that a will "shall be in writing, and shall be signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in the presence of two witnesses . . . who shall subscribe." The court argued that inasmuch as a testator may adopt as his signature a mark he could equally well adopt his own signature previously made, and that this acknowledgment when attested would satisfy the statute.

Great stress is laid on the fact that whereas the statute requires the witnesses to subscribe, the testator need only sign, but in so doing the court has failed to appreciate the second half of the meaning of the word sign. Obviously the testator's intention when he signed was that the will was completed as it stood, and not that the signature should include what he might think of later. Consequently the bequest of the automobile was not signed by the previous signature and the acknowledgment cannot amount to a signing, since no matter what the intent may be there is no actual marking of the paper. This is practically the view taken by Garrison, J., in the dissenting opinion. He held that the acknowledgment can not amount to more than affirming the signature as of the time when written.

When the statute requires signing at the foot or end of the will, the case under its exact facts has gone the other way.[11] And since the basis of the decision is that an acknowledgment of a prior signature is not the equivalent of an actual signing, the decision would seem in point, in spite of the difference in the statute.

T. S. P.

WILLS—VESTED REMAINDERS—After a gift of a life estate, there was a provision that, in the event of the death of the beneficiaries, that portion of the property devised to their use should be equally divided among the three named children of the testatrix's brother, "or as many as might be living at that time." It was held [1] that the children living at the death of the testatrix took a vested estate, subject to be divested upon the death of one or more of them during the continuance of the life estate.

This decision seems to be wholly in accord with principle and authority. In England, in several cases practically the same words were used and the court without hesitation held the interest to be vested.[2] In America, the particular provision has rarely been be-

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[10] 4 Comp. St. 1910, p. 5867, pl. 24.

[11] Casement v. Fulton, 5 Moore P. C. 130 (Eng. 1845); Matter of Foley, 76 Misc. Rep. 168 (N. Y. 1912).

[1] White v. Smith, 89 Atl. Rep. 272 (Conn. 1914).

[2] Sturges v. Pearson, 4 Mad. 411 (Eng. 1819); *In re* Saunders' Trust, 1 L. R. Eq. Cas. 675 (1866); Penny v. Commissioners, L. R. [1900] App. Cas. 628.